

**United States Department of Labor  
Employees' Compensation Appeals Board**

C.C., Appellant	)	
	)	
and	)	<b>Docket No. 09-618</b>
	)	<b>Issued: November 2, 2009</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Tulsa, OK, Employer	)	
	)	

<i>Appearances:</i>	<i>Case Submitted on the Record</i>
<i>Alan J. Shapiro, Esq., for the appellant</i>	
<i>Office of Solicitor, for the Director</i>	

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
COLLEEN DUFFY KIKO, Judge

**JURISDICTION**

On January 2, 2009 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decisions dated May 13 and November 18, 2008 denying his claim for wage-loss benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant is entitled to wage-loss benefits for total disability for any period between November 16, 2001 and October 20, 2006.

**FACTUAL HISTORY**

On November 16, 2001 appellant, then a 49-year-old letter carrier, sustained a traumatic injury to his lower back while lifting boxes in the performance of duty. He continued working in his date-of-injury job.

The record contains a November 19, 2001 attending physician's report from Dr. Matthew Stevens, a Board-certified family practitioner, who stated that appellant injured his back while lifting boxes at work. Dr. Stevens diagnosed lumbar myospasm/strain, which he

indicated was causally related to employment activities. In the form report, he indicated that appellant was totally disabled from November 19 through 25, 2001 and that he could return to light duty on November 26, 2001. In an accompanying duty status report, Dr. Stevens indicated that appellant could return to light duty on November 26, 2001. In a follow-up certification dated December 3, 2001, he indicated that appellant was “off work” from November 19 through 25, 2001.

In a June 20, 2006 report, Dr. Steven C. Anagnost, a Board-certified orthopedic surgeon, stated that appellant had recently experienced a worsening of lower back pain, which “may have started when he fell off a two-foot ladder two years before.” He diagnosed lumbar degenerative disc disease with intermittent radiculopathy. X-rays showed multilevel degenerative disease and collapse at L5-S1, as well as mild osteophyte formation. Straight leg raise was negative on the left, but mildly positive on the right.

On July 25, 2006 Dr. Anagnost related that appellant had experienced worsening back and leg pain since he sustained an employment injury approximately 15 years before. Appellant informed Dr. Anagnost that he had taken one week off from work following a July 10, 2006 magnetic resonance imaging (MRI) scan of the lumbar spine after, which his back pain went away, but numbness in his legs increased. Dr. Anagnost recommended surgery involving interbody stabilization with pedicle screw instrumentation.

On October 16, 2006 the Office accepted appellant’s traumatic injury claim for thoracic or lumbosacral neuritis or radiculitis. On October 25, 2006 appellant submitted a time analysis form summarizing absences for the period 1992 to October 2006 due to chronic back pain. He stated that, between 1992 and November 16, 2001, he used 480 hours of leave without pay (LWOP), and from 2002 through October 2006, he used all of his LWOP.

On November 2, 2006 the Office advised appellant to file a claim for lost wages, (Form CA-7) if he intended to claim benefits for disability due to an accepted condition.

In a December 29, 2006 second opinion report, Dr. William D. Smith, a Board-certified orthopedic surgeon, diagnosed chronic low back and bilateral lower extremity pain, secondary to lumbosacral disc disease. He recommended surgical decompression of L5-S1. On January 10, 2007 the Office authorized lumbar interbody fusion with instrumentation. The record contains hospital records, notes and follow-up medical reports relating to appellant’s lumbar surgery, which occurred on February 12, 2007.

On February 1, 2007 Dr. Stevens diagnosed lower back pain with degenerative disc disease. He stated that appellant “occasionally has severe flare-ups with lower back pain and must miss work completely one or more days in a row periodically.” Appellant indicated that the approximate date that his condition commenced was 1992, when he sustained his original back injury, with a recurrence in 2001. Dr. Stevens reported that one might “expect frequency of episodes of incapacitation three to four times per month (variable). Expected duration of episodes three to four days each episode (variable).”

On May 29, 2007 appellant filed a claim for compensation for total disability for the period November 16, 2001 through October 20, 2006. In support of his claim, he submitted a leave analysis form for the years 2004 through 2006.

On July 26, 2007 the Office informed appellant that the leave analysis submitted for the claimed period was illegible and requested that he resubmit a legible copy. On August 3, 2007 it informed appellant that the evidence of record was insufficient to establish his claim for wage-loss compensation. The Office advised appellant to submit medical documentation supporting his disability for each day claimed.

Appellant submitted a January 17, 2008 report from Dr. Don R. Barney, a Board-certified orthopedist, who provided a history of injury and treatment. Dr. Barney diagnosed lumbosacral neuritis; failed disc syndrome; lumbosacral strain and sciatica.

Appellant submitted reports from Dr. Denny E. Krout, a Board-certified orthopedist, who treated him for lower back pain. On March 18, 2008 Dr. Krout stated that appellant injured his lower back in January 2001, while trying to retrieve a package in his Jeep. He diagnosed postlumbar discectomy and fusion at L4-5. On March 10, 2008 Dr. Krout recommended occupational therapy for back pain. On April 14, 2008 he diagnosed lumbago.

By decision dated May 13, 2008, the Office denied appellant's compensation claim for the period November 16, 2001 through October 20, 2006. It found that the evidence of record failed to support disability during the claimed period.

On May 31, 2008 appellant, through his representative, requested a telephone hearing. In the September 11, 2008 telephonic hearing, appellant testified that he used all of his accumulated vacation and sick leave for the period in question, due to back pain. He alleged that the Office lost appellant's paperwork and was, therefore, unable to process his claim. Appellant's representative stated that appellant had no report from a physician that clearly outlined why he was unable to work during the claimed period due to the November 16, 2001 injury.

Subsequent to the hearing, appellant submitted a July 1, 2005 report from Dr. Andreas F. Revelis, a treating physician, Board-certified in pain medicine, indicating that he received an L5-S1 epidural steroid injection on that date. On September 6, 2005 Dr. Stevens stated that appellant had undergone a series of epidural steroid injections. He diagnosed lumbar degenerative disc disease and bilateral lower extremity radiculopathy. Dr. Revelis indicated that appellant was alert and moving all four extremities, with no new focal sensation or motor deficits.

Appellant submitted a September 30, 2008 report from Dr. Jorge Perez-Cruet, a Board-certified psychiatrist, who diagnosed major depressive disorder. The record also contains May 21 and September 10, 2008 functional capacity evaluations; follow-up reports dated June 19 and October 15, 2008 from Dr. Barney; and a July 15, 2008 schedule award evaluation from Dr. Kraut.

In a statement dated September 30, 2008, appellant alleged that he was forced to wait years for necessary surgery, due to the fact that the Office misplaced his paperwork. He requested compensation for vacation and sick leave, he was required to use as a result of his accepted condition.

By decision dated November 18, 2008, the Office hearing representative affirmed the Office's May 13, 2008 decision on the grounds that appellant did not provide any medical evidence supporting disability during the claimed period.

## LEGAL PRECEDENT

For each period of disability claimed, appellant has the burden of proving by the preponderance of the reliable, probative and substantial evidence that he is disabled for work as a result of his employment injury.<sup>1</sup> Whether a particular injury causes an employee to be disabled for employment, and the duration of that disability, are medical issues, which must be proved by a preponderance of the reliable, probative and substantial medical evidence.<sup>2</sup> The Board will not require the Office to pay compensation in the absence of medical evidence directly addressing the particular period of disability for which compensation is sought. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.<sup>3</sup>

Generally, findings on examination are needed to justify a physician's opinion that an employee is disabled for work. A claimant's burden of proving he was disabled on particular dates requires that he furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with medical reasoning.<sup>4</sup> Where no such rationale is present, the medical evidence is of diminished probative value.<sup>5</sup>

## ANALYSIS

Appellant filed claims for compensation alleging that he was totally disabled from working for intermittent periods from November 16, 2001 to October 20, 2006. The Board finds, however, that he failed to submit any probative medical evidence demonstrating total disability for this period of time due to his accepted condition.

The only medical evidence of record addressing the issue of appellant's disability during the claimed period consists of form reports from his treating physician, Dr. Stevens. In a November 19, 2001 attending physician's report, Dr. Stevens stated that appellant injured his back while lifting boxes at work and diagnosed lumbar myospasm/strain. He indicated that appellant was totally disabled from November 19, 2001 through 25, 2001, and that he could return to light duty on November 26, 2001. In an accompanying duty status report, Dr. Stevens stated that appellant could return to light duty on November 26, 2001. In a follow-up certification dated December 3, 2001, he noted that appellant was "off work" from November 19 through 25, 2001. None of Dr. Stevens' reports provided examination findings, a discussion of appellant's work activities or an explanation as to why his accepted condition prevented him from performing the duties of his position. The Board has held that a medical opinion not fortified by medical rationale is of diminished probative value.<sup>6</sup> Therefore,

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<sup>1</sup> *Fereidoon Kharabi*, 52 ECAB 291 (2001); *see also David H. Goss*, 32 ECAB 24 (1980).

<sup>2</sup> *Fereidoon Kharabi*, *supra* note 1; *see also Edward H. Horton*, 41 ECAB 301 (1989).

<sup>3</sup> *Fereidoon Kharabi*, *supra* note 1.

<sup>4</sup> *Ronald A. Eldridge*, 53 ECAB 218 (2001).

<sup>5</sup> *Mary A. Ceglia*, 55 ECAB 626 (2004).

<sup>6</sup> *Mary A. Ceglia*, *supra* note 5. *See Brenda L. DuBuque*, 55 ECAB 212 (2004); *see also David L. Scott*, 55 ECAB 330 (2004); *Willa M. Frazier*, 55 ECAB 379 (2004).

Dr. Stevens' opinion is of limited probative value and is insufficient to establish that appellant was disabled due to his accepted condition. His September 6, 2005 report which did not address the issue of disability is of no probative value.

On February 1, 2007 Dr. Stevens diagnosed lower back pain with degenerative disc disease. He stated that appellant "occasionally has severe flare-ups with lower back pain and must miss work completely one or more days in a row periodically." As Dr. Stevens failed to identify any specific dates on which appellant was allegedly disabled from employment, and did not explain how his accepted condition was causally related to such disability, his report lacks probative value. The Board will not require the Office to pay compensation in the absence of medical evidence directly addressing the particular period of disability for which compensation is sought. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.<sup>7</sup>

On June 20, 2006 Dr. Anagnost stated that appellant had recently experienced a worsening of lower back pain, which "may have started when he fell off a two-foot ladder two years before." He diagnosed lumbar degenerative disc disease with intermittent radiculopathy. Dr. Anagnost noted that x-rays showed multilevel degenerative disease and collapse at L5-S1, as well as mild osteophyte formation. Straight leg raise was negative on the left, but mildly positive on the right. On July 25, 2006 Dr. Anagnost related that appellant had experienced worsening back and leg pain since he sustained an employment injury approximately 15 years before. Appellant informed him that he had taken one week off from work following a July 10, 2006 MRI scan of the lumbar spine. Dr. Anagnost recommended surgery involving interbody stabilization with pedicle screw instrumentation. Either report contains an accurate history of injury or an opinion that appellant was totally disabled from employment during the claimed period. Therefore, Dr. Anagnost's reports are irrelevant to the issue at hand and insufficient to establish appellant's claim. The fact that appellant chose to stay home from work for a week in July 2006 does not establish his disability during that period.<sup>8</sup>

The record reflects that appellant received a series of epidural steroid injections from Dr. Revelis, but did not opine that he was disabled. Rather, Dr. Revelis described him as alert and moving all four extremities with no new focal sensation or motor deficits. Therefore, his reports do not support appellant's claim.

In his December 29, 2006 second opinion report, Dr. Smith diagnosed chronic low back and bilateral lower extremity pain, secondary to lumbosacral disc disease and recommended surgical decompression of L5-S1. As he did not address the issue of disability prior to October 20, 2006, his report lacks probative value. Similarly, hospital records, notes and follow-up medical reports relating to appellant's February 12, 2007 lumbar surgery, which do not contain an opinion on disability during the claimed period are not relevant to the issue at hand. Reports from Drs. Barney, Kraut and Cruet, who treated appellant subsequent to his 2007 surgery have no bearing on the issue of his disability from the date of his accepted injury and October 20, 2006.

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<sup>7</sup> *Fereidoon Kharabi, supra* note 1.

<sup>8</sup> *Id.* and accompanying text.

Appellant had the burden of proving by the preponderance of the reliable, probative and substantial evidence that he was disabled for work as a result of his employment injury. His representative argues on appeal that the Office's November 18, 2008 decision is contrary to the facts and the law. For the reasons stated above, the Board finds that appellant failed to sustain his burden of proof in establishing that he was totally disabled due to his accepted employment-related condition for any period November 16, 2001 to October 20, 2006.<sup>9</sup>

**CONCLUSION**

The Board finds that appellant has not established entitlement to wage-loss benefits for any period between November 16, 2001 and October 20, 2006.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated November 18 and May 13, 2008 are affirmed.

Issued: November 2, 2009  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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<sup>9</sup> See *Fereidoon Kharabi*, *supra* note 1. (The Board will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the particular period of disability for which compensation is claimed. To do so would essentially allow employees' to self-certify their disability and entitlement to compensation.)